

10149/H



UNITED NATIONS  
NATIONS UNIES

Tribunal pénal international pour le Rwanda  
International Criminal Tribunal for Rwanda

**IN THE APPEALS CHAMBER**

ICTR-99-52-A

16 May 2007

(10149/H - 10146/H)

Before: Judge Fausto Pocar, Presiding  
Judge Mohamed Shahabuddeen  
Judge Mehmet Güney  
Judge Andréia Vaz  
Judge Theodor Meron

Registrar: Mr. Adama Dieng

Decision of: 16 May 2007

Ferdinand NAHIMANA  
Jean-Bosco BARAYAGWIZA  
Hassan NGEZE  
(Appellants)

v.

THE PROSECUTOR  
(Respondent)

Case No. ICTR-99-52-A

ICTR Appeals Chamber

Date: 16 May 2007

Action: P.T.

Copied To: Collected Judges  
Presides, Adama Dieng, P. Meron

Archives

*[Signature]*

**DECISION ON "THE APPELLANT JEAN-BOSCO BARAYAGWIZA'S  
CORRIGENDUM MOTION RELATING TO THE APPEAL TRANSCRIPT OF 17<sup>TH</sup> AND  
18<sup>TH</sup> JANUARY 2007"**

**Counsel for Jean-Bosco Barayagwiza**

Mr. D. Peter Herbert  
Ms. Tanoo Mylvaganam

**Counsel for Ferdinand Nahimana**

Mr. Jean-Marie Biju-Duval  
Ms. Diana Ellis

**Counsel for Hassan Ngeze**

Mr. Bharat B. Chadha  
Mr. Dev Nath Kapoor

**Office of the Prosecutor**

Mr. James Stewart  
Mr. Neville Weston  
Mr. George Mugwanya  
Ms. Linda Bianchi  
Mr. Abdoulaye Seye  
Mr. Alfred Orens Orens

International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

CERTIFIED TRUE COPY OF THE ORIGINAL SEEN BY ME  
COPIE CERTIFIÉE CONFORME À L'ORIGINAL PAR NOUS

NAME / NOM: *Patrice Tchidimbo*  
SIGNATURE: *[Signature]* DATE: *16/05/07*

16 May 2007

Case No. ICTR-99-52-A

10148/H

THE APPEALS CHAMBER of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 ("Appeals Chamber" and "Tribunal", respectively),

BEING SEIZED OF "The Appellant Jean-Bosco Barayagwiza's Corrigendum Motion relating to the Appeal Transcript of 17<sup>th</sup> and 18<sup>th</sup> January 2007" filed on 11 April 2007 ("Motion") by Counsel for Jean-Bosco Barayagwiza ("Appellant");

NOTING that the Prosecution has not filed a response to the Motion;

NOTING that the Appellant identifies the following alleged errors in the English transcripts of the appeals hearing in the present case which took place on 17 and 18 January 2007 ("Appeals Hearing"):

- 17 January 2007, T. 68, lines 18-19: the Appellant submits that the English version should read "There is no evidence showing that he was designated otherwise, in violation of the party statute";<sup>1</sup>
- 17 January 2007, T. 69, lines 1-3: the Appellant submits that the English version should read "The presence of the Appellant is reported only in one meeting, that of the 10<sup>th</sup> of October December 1993. His presence was due to the fact that the executive committee had to examine the report of his mission to Europe";<sup>2</sup>
- 17 January 2007, T. 69, lines 7-8: the Appellant submits that the English version should read "The only time Barayagwiza was designated in one of those *ad hoc* committees was the 10<sup>th</sup> 12<sup>th</sup> of October 1993";<sup>3</sup>
- 17 January 2007, T. 79, lines 12-13: the Appellant submits that the English version should read "It isn't unlikely that CDR could entrust responsibility to implement its alleged policy to a man belonging to another party while it had its own local leaders";<sup>4</sup>
- 17 January 2007, T. 81, lines 4-5: the Appellant submits that the reference to paragraph 719 of the Trial Judgement is omitted in the English version of the transcript;<sup>5</sup>
- 17 January 2007, T. 81, lines 20-22: the Appellant submits that the English version should read "The Appellant submits that the Chamber should have considered seriously the request

<sup>1</sup> The Appeals Chamber notes that the French version of this transcript reads: "Il n'y a aucune preuve qui montre qu'il a été désigné en violation du Statut du parti" (T. 74, lines 27-28).

<sup>2</sup> The Appeals Chamber notes that the French version of this transcript reads: "La présence de l'Appelant à la réunion du 10 octobre 93 est que le comité exécutif devait examiner le rapport de sa mission en Europe", (T. 75, lines 7-8).

<sup>3</sup> The Appeals Chamber notes that the French version of this transcript reads: "La seule instance où Barayagwiza a été désigné dans ces comité *ad hoc* était le 10 octobre 1993" (T. 75, line 12).

<sup>4</sup> The Appeals Chamber notes that the French version of this transcript reads: "Il est peu probable que l'on ait... que l'on ait pu confier la responsabilité à quelqu'un qui appartenait à un autre parti alors qu'il avait des responsables locaux" (T. 86, lines 22-23).

<sup>5</sup> The Appeals Chamber notes that the French version of this transcript reads: "Donc, paragraphe 719, la Chambre de première instance a conclu que Barayagwiza a supervisé des barrages routiers tenus par les Impuzamugambi, en vue d'intercepter et de tuer des Tutsis" (T. 88, lines 28-29).

10147/H

of identification in order to avoid a miscarriage of justice as occurred in the *Rwamakuba* case as to ~~Witness AHB~~;<sup>6</sup>

- 17 January 2007, T. 81, lines 24-25: the Appellant submits that the English version should read "ABC was also unable to identify CDR members and Impuzamugambi to whom he claimed the Appellant gave orders to kill Tutsis and the persons from the south unless they belonged to CDR or MRND";<sup>7</sup>
- 17 January 2007, T. 83, lines 17-19: the Appellant submits that the English version should read "With such evidence being uncontested by the Prosecution, no reasonable Judge could have concluded that Bayayagwiza [*sic*] was present advising or controlling roadblocks from mid-April to mid-June '94";<sup>8</sup>
- 18 January 2007, T. 60, lines 24-25: the Appellant submits that the Kinyarwanda term is transcribed incorrectly and that "there is a need for the Appeal Chamber to refer to the oral recording in order to avoid any further error";<sup>9</sup>
- 18 January 2007, T. 64, line 32: the Appellant submits that the English version should read "The Chamber did not quote it correctly quote from that testimony".<sup>10</sup>

RECALLING that, at the beginning of his presentation at the Appeals Hearing, the Lead Counsel for the Appellant provided the interpreters with a written text containing his intended oral submissions;<sup>11</sup>

RECALLING that the Appellant's Lead Counsel was reading his submissions at considerable speed despite numerous requests from the interpreters, court reporters and Judges of the Appeals Chamber to slow down;<sup>12</sup>

CONSIDERING that, under the circumstances, the errors and discrepancies contained in the transcripts were practically inevitable;

<sup>6</sup> The Appeals Chamber notes that the French version of this transcript reads: "L'Appelant prétend que la Chambre de première instance aurait dû prendre sérieusement en compte la question de l'identification, avant de tirer ses conclusions" (T. 89, lines 17-18).

<sup>7</sup> The Appeals Chamber notes that the French version of this transcript reads: "et le témoin ABC n'a pas non plus été en mesure d'identifier les membres de la CDR ou des Impuzamugambi à qui il prétend que l'Appelant a donné des ordres de tuer des Tutsis, ou des personnes qui appartenaient à la CDR ou au MRND" (T. 89, lines 18-20).

<sup>8</sup> The Appeals Chamber notes that the French version of this transcript reads: "Ces éléments de preuve, qui ne sont même pas contestés par le Procureur, ne devaient pas permettre à un juge raisonnable de conclure que Barayagwiza supervisait ou contrôlait des barrages routiers de la mi-avril au mois de juin 1994" (T. 91, lines 31-33).

<sup>9</sup> The Appeals Chamber notes that the English version of this transcript reads: "In the terms of the use of the word crucially *Tubatsembatsembe* and its derivatives; no request to have an expert witness come along to explain what that meant" (T. 60, lines 24-25), while the French version reads: "La lecture erronée de « Tu taxi tsembatsembe » (phon.) est que... — en français, on dit «Tuzi tsembatsembe » (phon.) — et partout, c'est différent. Et il y a une erreur fondamentale" (T. 62, lines 29-30).

<sup>10</sup> The Appeals Chamber notes that the French version of this transcript reads: "... et la Chambre a dénaturé ces propos en les citant" (T. 67, line 10).

<sup>11</sup> 17 January 2007, T. 54, lines 16-17: "I have left the interpreters with a trans — full transcript. So if I am to finish this discourse, I would have to go slightly quicker. So if I could ask for their indulgence, please."

<sup>12</sup> E.g., 17 January 2007, T. 54, lines 14; 27, 34-35; T. 55, lines 13-16; T. 67, lines 17-18.

10146/H

**RECALLING** that the Presiding Judge clarified that the written text provided by the Lead Counsel for the Appellant had "no standing in this case" and that only the oral submissions would be reflected in the transcript of the Appeals Hearing;<sup>13</sup>

**CONSIDERING** the seriousness of the discrepancies identified by the Appellant;

**NOTING**, after having carefully reviewed the remainder of the oral arguments presented by the Appellant's Lead Counsel at the Appeals Hearing, that there is a considerable number of other instances where the English and French versions of the transcript differ;

**CONSIDERING** that these discrepancies raise serious doubts concerning the accuracy and reliability of the transcripts of the Appeals Hearing;<sup>14</sup>

**FINDING**, therefore, that it is in the interests of justice to have the relevant transcripts in both English and French reviewed for accuracy;<sup>15</sup>

**FOR THE FOREGOING REASONS,**

**GRANTS** the Motion and, *proprio motu*, **ORDERS** the Registry:

1. To review for accuracy and re-certify the English transcript of the entire intervention of the Appellant's Lead Counsel at the Appeals Hearing, as well as the transcript of the corresponding French interpretation;
2. To submit to the Appeals Chamber and the parties the re-certified copies of the relevant portions of the transcripts no later than 18 June 2007;

**FURTHER ORDERS** that, in case of irreconcilable discrepancies between the correct transcription of the oral arguments submitted at the Appeals Hearing in English and the French interpretation thereof, the re-certified English transcription shall prevail.

Done in English and French, the English version being authoritative.

Done this 16<sup>th</sup> day of May 2007,  
At The Hague, The Netherlands.



Fausto Pocar  
Presiding Judge

<sup>13</sup> 17 January 2007, T. 87, lines 30-32.

<sup>14</sup> Cf. *Décision sur la Requête de Ferdinand Nahimana aux fins de production d'enregistrements d'émission RTLM contenus dans la pièce à conviction C7*, 20 November 2006, para. 13; *The Prosecutor v. Elizaphan Ntakirutimana and Gérard Ntakirutimana*, Cases No. ICTR-96-10-A and ICTR-96-17-A, Decision on Defence Motion to Strike Annex B from the Prosecution Response Brief and for Re-Certification of the Record, 24 June 2004, p. 3.

<sup>15</sup> Cf. Order for Re-Certification of the Record, 6 December 2006, p. 2.